

MAR 16 2006

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

ALANA K. BULLIS,

Plaintiff - Appellant,

v.

DAVID NICHOLS, individually and as a
marital community,

Defendant - Appellee,

v.

CITY OF DUPONT,

Defendant-third-party-defendant
- Appellee.

No. 05-35966

D.C. No. CV-05-05081-RJB

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

Submitted March 8, 2006^{**}

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Alana K. Bullis appeals pro se from the district court's summary judgment in her 42 U.S.C. § 1983 action alleging that David Nichols, acting in concert with city officials, violated her First Amendment rights by retaliating against her for her political expression. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo the district court's grant of summary judgment, *Morrison v. Hall*, 261 F.3d 896, 900 (9th Cir. 2001), and review for abuse of discretion a grant of attorneys' fees, *Price v. State of Hawaii*, 939 F.2d 702, 706 (9th Cir. 1991). We affirm.

The district court properly granted summary judgment to Nichols because Bullis failed to raise a genuine issue of material fact as to whether Nichols's conduct rose to the level of a constitutional violation, or whether he acted under color of state law. *See Ortiz v. Washington County*, 88 F.3d 804, 810 (9th Cir. 1996).

The district court did not abuse its discretion by determining that an award of attorneys' fees was appropriate based on a finding that Bullis's claim was

“unreasonable, frivolous, meritless or vexatious.” *See Margolis v. Ryan*, 140 F.3d 850, 854 (9th Cir. 1998).

AFFIRMED.